IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

OP.No. 4498 of 2001(I)

PETITIONER:

M.K.AMMINI AMMA,
W/O.LATE PARAMESWARAN NAIR,
KARUTHALA HOUSE,
MURIAMANGALAM,
MAMANGALAM,
THIRUVANKULAM (VIA),
ERNAKULAM.

BY ADV. SRI.M.V.THAMBAN

RESPONDENTS:

---

1. SECRETARY TO THE GOVERNMENT,
GOVERNMENT OF INDIA,
MINISTRY OF DEFENCE,
NEW DELHI.

2. SECRETARY TO GOVERNMENT,
GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS,
NEW DELHI.

3. CHIEF CONTROLLER OF DEFENCE ACCOUNTS (PENSION),
ALLAHABAD.

4. OFFICER IN CHARGE (RECORDS),
DEFENCE SECURITY CORPS (RECORDS),
MILL ROAD,
KANNUR,
KERALA.

5. CHIEF OF ARMY STAFF,
ARMY HEAD QUARTERS,
NEW DELHI.

BY ADV. SRI.C.S.ABDUL SAMMAD, ADDL.CGSC
SRI.THOMAS MATHEW NELLIMOOTTIL,SR.PANEL SCGSC
SRI.K.M.JAMALUDHEEN, CGC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 4498 of 2001(I)

APPENDIX

ORDER ON C.M.P.NO.7438/2001

CLOSED.

SD/-THOTTATHIL B.RADHAKRISHNAN, JUDGE

08/06/2007

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF DISCHARGE CERTIFICATE ISSUED BY THE 4TH RESPONDENT.

EXT.P2 TRUE COPY OF DISCHARGE CERTIFICATE ISSUED TO ONE SRI.KRISHNAN NAIR.

EXT.P3 TRUE COPY OF DISCHARGE CERTIFICATE ISSUED TO ONE SRI.M.A.PADMANABHAN.

EXT.P4 TRUE COPY OF REPRESENTATION DATED 27/9/1994 SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT.

EXT.P5 TRUE COPY OF REPRESENTATION DATED 19/8/1995 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P6 TRUE COPY OF LETTER NO.PEN/FPIV/3756/82, DATED 24/7/1995 ISSUED BY THE 4TH RESPONDENT.

EXT.P7 TRUE COPY OF LETTER DATED 20/9/95 ISSUED BY THE 3RD RESPONDENT.

EXT.P8 TRUE COPY OF LETTER DATED 30/5/96 ISSUED BY THE 3RD RESPONDENT.

EXT.P9 TRUE COPY OF LETTER DATED 15/6/1996 ISSUED BY THE 4TH RESPONDENT.

EXT.P10 TRUE COPY OF REPRESENTATION DATED 21/11/2000 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P11 TRUE COPY OF LETTER NO.PEN/FP-6/3763/GEN.69, DATED 11/1/2001, ISSUED BY THE 4TH RESPONDENT.

EXT.P12 TRUE COPY OF G.O.(P) NO.369/87/FIN, DATED 31/3/1987, ISSUED BY THE GOVERNMENT OF KERALA.

OP.No. 4498 of 2001(I)

RESPONDENTS' EXTS:

ANNEXURE A4(a) COPY OF PARAGRAPH NO.595 OF REGULATIONS FOR THE ARMY VOLUME 2(REVISED EDITION) 1987

ANNEXURE A4(b) EXTRACT FROM THE LONG ROLL MAINTAINED BY DEFENCE SECURITY CORPS RECORD OFFICE.

ANNEXURE A4(c) COPY OF RULE 132 OF PENSION REGULATIONS FOR THE ARMY PART I (1961).

ANNEXURE A4(d) TRUE COPY OF LETTER NO.A/27/428/AG/PS4(a)/3523/D (PENSION/SERVICES) DATED 14/5/1971.

\\TRUE COPY//

THOTTATHIL B. RADHAKRISHNAN, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

O.P.No. 4498 of 2001 (I)

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 8th day of June, 2007

J U D G M E N T

Going by Ext.P1, Parameswaran Nair was discharged from Defence Security Corps on 14/05/1964, after his enrolment on 15/05/1951 before which he served the Cochin Army from 22nd September, 1947 to 14th May, 1951. Petitioner, contending that she is the widow of the said Parameswaran Nair, states that he died a natural death on 08/12/1980. She claims grant of pension including family pension on account of the aforesaid services of Sri.Parameswaran Nair by contending that the periods spent by him serving the Cochin Army is to be clubbed along with the period he served the Defence Security Corps.

2. There is no material on record to even faintly notice that after his discharge on 14/05/1964, late Parameswaran Nair had agitated the issue of the clubbing of the two services for the

purpose of pension till he died on 08/12/1980. Even Ext.P4 representation of the petitioner is only on 27/09/1994, nearly, 14 years after the demise of Sri.Parameswaran Nair. Under such circumstances, the respondents are justified in contending that this petition, seeking clubbing of service for determining the family pension, may not be entertained.

3. While the respondents in their counter affidavit, in their wisdom, chose not to comment upon the plea of the petitioner that Exts.P2 and P3 evidence grant of such clubbing of benefit of two services for the purpose of determining the pension, the said materials by themselves do not impress because without further particulars being available, it would not be justifiable to treat Parameswaran Nair and the beneficiaries of Exts.P2 and P3 as similarly situated. That apart, going by Ext.R4(d), it is explicit that a person entering the Defence Security Corps after earlier service will continue to enjoy the pension component etc. referable to the earlier service as a separate entity and such transfer would be treated as a fresh entry into service for all purposes. Therefore, even if I were to take that Exts.P2 and P3

evidence comparable cases, on the face of an available Rule, it is inappropriate to extend the benefit granted contrary to the rule, merely on the principle that the persons are similarly situated. Unless it is shown that Exts.P2 and P3 grants were legitimate, I do not deem it appropriate to extend any relief to Parameswaran Nair or his heirs on the basis of the arguments that Exts.P2 and P3 relate to similarly situated persons.

For all the foregoing reasons, this original petition fails and the same is accordingly, dismissed.

THOTTATHIL B.RADHAKRISHNAN
Judge

ms

THOTTATHIL B. RADHAKRISHNAN, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

O.P.No. 4498 of 2001 (I)

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

J U D G M E N T

8th June, 2007